

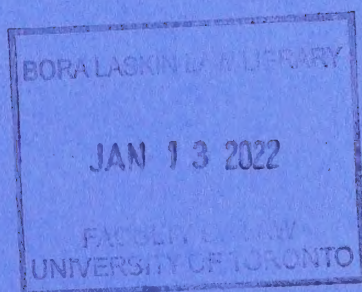


UNIVERSITY OF TORONTO
FACULTY OF LAW

**LAW263H1 S LEC0101 20221: THE LAW OF WORK
2022 WINTER TERM
CASES AND COURSE MATERIALS**

Volume I

Prof. Brian Langille



**FACULTY OF LAW
UNIVERSITY OF TORONTO**

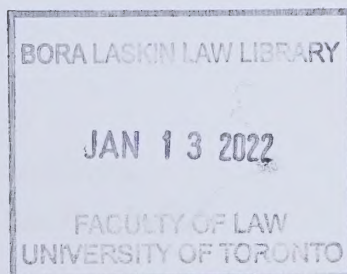
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Volume I

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THE LAW OF WORK
2022 Winter Term
Tuesdays and Thursdays, 4:10-6:00 pm

PROFESSOR BRIAN LANGILLE

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Office Hours: Friday Afternoon after 1:00 pm, by appointment (e-mail in advance)
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COURSE OUTLINE

SESSION 1 Tues, Jan 11	What is Labour Law? How do we know? Langille, “Labour Law’s Back Pages”	CB 24-29
SESSION 2 Thurs, Jan 13	The “Contractual Lens” and a set of very basic issues it generates	
	Who is an Employee? Who is an Employer? – Common Law and Beyond	
	1. Kahn-Freund, Langille and Davidov	CB 228-235
	2. Carter v Bell (OCA, 1936)	CB 235
	3. Denham v. Midland Mutual	Q
	4. Lian v. J Crew	Q
	5. Prassl and Risak, “Uber, Taskrabbit and Co.”	CB 240
	6. Faskens (SCC, 2014)	CB 1159
	7. Robichaud (SCC, 1987)	CB 1150
	8. United Independent Operators (OCA, 2011)	Q
	9. R v City of London (OCJ, 2020)	Q
	10. Tim Hortons	CB 1155
SESSION 3 Tues, Jan 18	The Common Law I	
	A. General	
	11. MacNeil, “The Many Futures of Contract” pp. 693-696, 720-725	Q
	B. “Management Rights” at Common Law I – Existing “rights”	
	12. Greenberg v. Meffert	Q
	C. “Management Rights” at Common Law II – Changing “rights”/Constructive Dismissal	
	13. Peerless Laundry v. Neal	Q
	14. KMA Caterers v. Howie	Q
	15. Hill v. Peter Gorman	Q
	16. Wronko v. Western Inventory	Q
	17. Potter v New Brunswick Legal Aid (SCC, 2015)	CB 284
	18. Chapman v GPM Investment Management (OCA, 2017)	Q
SESSION 4 Thurs, Jan 20	The Common Law - II	
	A. Employee Breach (“Cause”)/“Lesser Penalties”	
	19. Laws v. London Chronicle	Q
	20. McKinley v. BC Tel (SCC)	CB 274

	B. Contract and Tort	
	21. Douglas v. Kinger (OCA, 2008)	Q
	22. Sataur v Starbucks (OCA, 2017)	Q
	AndRecall London Drugs (SCC) from 1 st Year Contracts	
	C. Fiduciary Obligations/Non-Competes	
	23. RBC Dominion v. Merrill Lynch (SCC) (see especially Abella's dissent)	Q
	24. Employment lawyers grow unnerved as the use of non-compete clauses spread across Canada" (Globe and Mail, Sept 28, 2019)	Q
SESSION 5 Tues, Jan 25	The Common Law - III - The Implied Term of Reasonable Notice	
	25. Bardhal v. Globe and Mail	Q
	26. Machtinger v. HOJ (SCC, 1992)	CB 1031
	27. Cronk v. Canadian General Insurance (including note re: Ont. CA decision)	CB 298
	28. Ceccol v. Ontario Gymnastic Federation	CB 248
	29. Nardocchio v. CIBC	Q
	30. Wallace v. United Grain Growers (SCC, 1997)	CB318
	31. ***AND DISSENT***	CB 318
	"Blue J. Legal" Demonstration with Prof. Niblett	
SESSION 6 Thurs, Jan 27	The Common Law - IV	
	A. Remedies	
	32. Keays v. Honda Canada Inc. (SCC, 2008) <i>(Query - does Keays overrule Wallace?)</i>	CB 326
	33. Boucher v Walmart Canada and Pinnock (OCA)	Q
	34. Matthews v Ocean Nutrition (SCC, 2020)	Q
	B. Contracting Out of Reasonable Notice Visit of Stephan Moreau (Cavalluzzo's)	
SESSION 7 Tues, Feb 1	The Common Law - V	
	A. Human Rights at Common Law	
	35. Christie v. York (SCC, 1944)	Q
	36. Seneca College v Bhadauria (SCC, 1981)	Q
	37. Keays v. Honda (Session 5)	
	38. Ontario Human Rights Code, s. 46.1	
	B. Freedom of Association at Common Law	
	39. "Estevan 1931"	CB 409

SESSION 8 Thurs, Feb 3	Collective Bargaining	
	A. Scope (Who is an Employee/Employer? Again)	
	40. Hearst Publications (USSC, 1944)	Q
	OLRA s.1(1)	
	B. Dependent Contractors	
	OLRA s.1(1)	
	41. Foodora (OLRB, 2020)	Q
	C. Exclusions	
	a) "Rational"	
	OLRA s.1(3)(b)	
	42. Corporation of the District of Burnaby (1974, BCLRB, (Weiler)	CB 351
	43. Children's Aid Ottawa-Carleton	CB 364
	b) "Irrational"	
	OLRA s.1 (3) a and s.3	
	See (later) - Fraser (OCA and SCC)	
	D. Employer	
	44. Pointe Claire (SCC, 1997)	CB 385
	And ...Reread Denham v. Midland Mutual, Session 2	
	E. Trade Unions	
	45. Smith & Rhuland v. Nova Scotia (SCC, 1953)	CB 379
	46. Kubota	Q
SESSION 9 Tues, Feb 8	"Recognition" and "Unfair Labour Practices"	
	A. Introduction	
	47. Re-read "Estevan" (CB 409)	
	B. "Motive" and "Non-motive ULPs"	
	OLRA ss. 5, 70, 72	
	48. Int'l Wallcoverings (OLRB)	CB 416
	49. CBC v. CLRB ("Goldhawk") (SCC, 1995)	CB 423
	C. "The Freeze"	
	OLRA s. 86	
	50. Exchange Parts (USCA, 1941) (Query - why is this case HERE?)	CB 439
	OLRA s. 12.1	
SESSION 10 Thurs, Feb 10	Unfair Labour Practices II	
	A. Free Speech	
	51. Walmart (see now OLRA s. 11)	CB 440
	B. No Solicitation Rules	
	52. Canada Post	CB 450

	C. Plant Shutdown?	
	53. Plourde v. Walmart (SCC, 2009)	Q
	54. UFCW v. Walmart (SCC, 2014)	CB 465
	55. Teamsters v. FedEx (CIRB, 2015)	Q
	D. Remedies	
	OLRA ss. 11, 96, 98	
	56. National Bank of Canada - both CLRB and SCC	CB 460 and 461
	E. Professional responsibility of Labour Lawyers	
	57. LSUC v. Rovet	CB 471

SESSION 11 Tues, Feb 15	Bargaining Units and Certification	
	OLRA ss. 6.1, 7, 8, 9, 10, 15	
	58. Elizabeth Lennon, "Organizing the Unorganized"	CB 491
	59. CIBC (CLRB, 1977)	CB 493
	60. TD Sudbury	CB 498
	61. CB 503-506, including NSLRB decision in Michelin Tires and Langille discussing BCLRB decision in Amon Investments	
	And...Reread Lian v. J Crew ("just the facts")	
SESSION 12 Thurs, Feb 17	The Duty To Bargain	
	A. Content	
	OLRA s. 17	
	62. Devilbiss	CB 543
	63. Graphic Arts	CB 544
	64. Noranda	CB 545
	65. Radio Shack	CB 552
	66. Canada Trustco	CB 559
	67. Langille and Macklem	CB 562
	68. Royal Oak Mines (SCC, 1996)	CB 566
	B. Scope	
	69. Pulp and Paper (BCCRB, Weiler, 1978)	Q
	70. Langille	CB 576
	71. Consolidated Bathurst	CB 578

- READING WEEK -
FEBRUARY 22-25

SESSION 13 Tues, Mar 1		
	A. The Duty To Bargain - Remedies	
	72. Royal Oak Mines, (SCC, 1996)	CB 584
	73. Egg Films (NSLRB)	CB 589
	B. Economic Conflict I - The Constitutional Issue	
	Alberta Reference - "The Trilogy" (SCC, 1986):	CB 871
	74. - LeDain's judgement	
	75. - McIntyre's judgement	

	76. - Dickson's judgement	
	77. SaskFed (SCC, 2015)	CB 972
	78. Canada Post (Ont. Sup. Ct., 2016)	
	79. UFCW V Medleaf (AFFRAT, 2020)	Q
SESSION 14 Thurs, Mar 3	Economic Conflict II	
	A. What is a Strike? A Lockout?	
	OLRA s.1(1)	
	a) Strike	
	80. Graham Cable	CB 606
	81. ILA v. MEA (SCC, 1979)	CB 611
	82. Nelson Crushed Stone (OLRB)	CB 613
	83. Political Protests/"Gone Fishin'"	CB 614
	b) Lockout	
	84. Westroc Industries (OLRB, Adams)	CB 620
	B. Multiple Fora	
	85. St. Anne Nakawic (SCC, 1986)	CB 637
	OLRA s.100	
SESSION 15 Thurs, Mar 8	Economic Conflict III - Picketing	
	86. Hersees of Woodstock (OCA, 1963)	CB 660
	87. Pepsi-Cola (SCC, 2002)	CB 663
	88. Consolidated Bathurst (OLRB)	Q
	Economic Conflict IV- Employee Status, Employee Unilateral Action During a Strike	
	89. Rogers Cable	CB 647
	90. Royal York	CB 673
	91. Eastern Provincial Airways	CB 675
	92. McGavin Toastmaster (SCC, 1976)	CB 781
	93. Neenah Paper (OLRB, 2006)	CB 616
	OLRA s. 80	
SESSION 16 Tues, Mar 10	Arbitration I (The Big Picture)	
	OLRA ss. 48, 49	
	94. Polymer Corporation (Laskin, Arbitrator)	Q
	95. Young v. CNR (PC 1931)	CB 694
	96. Russelsteel (Arthurs)	CB 708
	97. "Lights and Sirens" (OCA)	Q
	98. CNR v. Beatty	Q
	99. Irving Pulp and Paper (SCC, 2013) (CB 712)	CB 712
	100. Association of Justice Counsel v. Canada (Attorney General) (SCC, 2017)	Q

SESSION 17 Tues, Mar 15	Arbitration II (Dismissal and other issues)	
	A. Dismissal	
	101. Wm. Scott (BCLRB)	CB 740
	102. New Dominion (Beck)	CB 744
	B. Another example – Drug Testing	
	Irving Pulp and Paper (re-read, Session 16)	
	C. Powers of arbitrators	
	103. Weber (SCC, 1995)	CB 750
	104. O’Leary v. NB (SCC, 1995)	Q
SESSION 18 Thurs, Mar 17	The Duty of Fair Representation (DFR) and Internal Trade Union Affairs	
	A. DFR	
	OLRA s.74	
	105. Steel v. Louisville (USSC, 1944)	CB 790
	106. Bukvitch	CB 793
	107. Atkinson	CB 798
	108. Rayonier	CB 801
	B. Internal Union Affairs	
	109. Berry v. Pulley (SCC, 2002)	CB 830
SESSION 19 Tues, Mar 22	The Constitutional Revolution	
	110. BC Health (SCC, 2007)	CB 900
	111. Fraser at OCA (2009)	CB 925
	112. Fraser at SCC (2011)	CB 933
	113. MPAO (SCC, 2015)	CB 947
SESSION 20 Thurs, Mar 24	Employment Standards I	
	A. Introduction	
	114. Judy Fudge, “The New Workplace”	CB 997
	115. Roy Adams, “Employment Standards in Ontario: An Industrial Relations System Analysis”	Q
	116. “In Sweden the Men Can Have it All” – New York Time	Q
	117. Why can’t Dads have it all?” – Globe & Mail, 17 November 2017	Q
	118. “MacDonalds Workers in Denmark Pity Us” - NYTimes	Q
	B. Status	
	119. Heller v Uber (OCA, 2019) re contracting out of the ESA (paras 1-51 and 74-76)	Q
	120. Uber v Aslam (UKSC, 2021) especially paras 57-89	Q
	121. Dionne v Commission Scolaire des Patriotes (SCC, 2014)	Q
	E.S.A. ss. 4(1), 5(1)	
	122. Modern Cleaning Concept (SCC, 2019)	Q
	C. Hours of Work	
	123. Falconbridge (OCA)	Q

	D. Dismissal	
	Re-read HOJ (Session 4)	Online
	124. Canada Labour Code ss. 240-246	
	E. Multiple Regimes	
	125. Curtis Products (Langille)	Q
SESSION 21 Tues, Mar 29	Human Rights at Work I	
	A. Scope	
	126. British Columbia Human Rights Tribunal v. Schrenk (SCC, 2017) (read dissent carefully and think of Robichaud; Session 2)	Q
	B. The Basic Framework	
	127. "Meiorin" (SCC, 1999)	CB 1075
	128. "Action Travail" (SCC, 1987)	Q
	129. Fraser, Pilgrim, and Fox v AG Canada (SCC, 2020)	Q
SESSION 22 Thurs, Mar 31	Human Rights at Work II – "Regime Overlap"	
	130. Air Canada (SCC, 2006)	Q
	131. McGill Health Centre (SCC, 2007)	Q
	132. Okanagan School District Bd. (SCC, 1992)	CB 1106
	133. Hydro Quebec (SCC, 2000)	CB 1099
	134. Stewart v. Elk Valley Coal Corp. (SCC, 2017)	Q
	135. Northern Regional Health Authority v Horrocks (SCC, 2021)	Q
SESSION 23 Tues, Apr 5	International/Transnational Labour Law	
	A. Vignette – Rana Plaza – and Canada	
	136. CB 196-203	CB 196-203
	137. Das v. George Weston (Rana Plaza), paras 1-5, 31-114, 520-559	Q
	B. Trade Agreements	
	138. CB 158-175	CB 158-175
	C. The ILO	
	139. Langille, "The Curious Incident of the ILO, Myanmar, and Forced Labour"	Q
SESSION 24 Thurs, Apr 7	Review	
	"I Fought the Law and the Law Won" or "Speaking Rationality to Power"	
	140. CUPE v. Ontario (SCC, 2003) (Q)	Q

